

Of trade secrets, trade wars and trade-offs

The United States and China are locked in an escalating battle over trade secrets and other IP rights for which there will be no clear winner

By Bruce Berman

China has been accused of engaging in a campaign to use state capital and unreasonable IP demands to dominate targeted industries. The counterargument is that US and other businesses have been somewhat complicit, willing to do almost anything to gain a foothold in an enormous market.

China's stated plan is to attain leadership in fields such as robotics and electric cars by 2025, which is no easy feat. Germany, Japan and the United States charge that China has unfairly capitalised its own companies, hobbled foreign competitors and forced them to share IP rights. While some accept this as the price of doing business in China, others believe that it is being unreasonable.

China's desire to lead in key industries is not the issue – it is how it proposes to get there and what business practices it considers acceptable.

Growing wealth

The size of the middle class in China, estimated at 400 million, is greater than the middle classes of the United Kingdom, Germany, France and the United States combined. This population is not as financially expansive as those in western nations, but it constitutes a highly coveted consumer class. The number of people in China with at least Rmb10 million (\$1.47 million) of investable assets hit 1.6 million in 2016, up nine-fold since 2006, according to Bain Consulting. The overall value of the private wealth market is \$24 trillion. China is second to the United States in number of millionaires.

It is not entirely clear if US and other nations' companies eager to do business in China are giving away more than they should, or if China, fueled by its mission announced in 2015, is causing western giants to bend to unreasonable demands. It is probably a little of each, with a heavy dose of cultural confusion to complicate matters.

"Made in China 2025" is a state-led industrial policy that seeks to make China dominant in global high-tech manufacturing. The programme aims to use government subsidies, mobilise state-owned enterprises and pursue IP acquisition to catch up with – and surpass – western technological prowess in advanced industries.

The United States and other major industrialised democracies say that these tactics not only undermine China's adherence to international trade rules, but also pose a security risk. The US government argues that the policy relies on discriminatory treatment of foreign investment, forced technology transfers, IP theft and cyber espionage – practices that have encouraged the Trump administration to levy tariffs on goods and block several Chinese-backed technology acquisitions.

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Fordham University



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Among the key sectors targeted by China for rapid development are:

- high-end numerically controlled machine tools and robots;
- aerospace equipment;
- ocean engineering equipment and high-end vessels;
- energy-saving cars and new energy cars;
- new materials (eg, polymers); and
- biomedicine and high-end medical equipment.

"China's goal is to reduce its dependence on foreign technology and promote Chinese high-tech manufacturers in the global marketplace", writes the Council on Foreign Relations, an independent US think tank. Further, it states that:

Semiconductors are an area of particular emphasis, given their centrality to nearly all electronic products. China accounts for about 60% of global demand for semiconductors but only produces some 13% of global supply.

China's view of what it can and must do to be more competitive is not the west's. Should western businesses refuse to do business under these conditions? Perhaps, but it is doubtful whether you would get many companies to agree.

Intellectual piracy

Early in its history the United States employed some of the same techniques that the Chinese are using today to wrest trade secrets and other IP rights from the United Kingdom.

US Treasury Secretary Alexander Hamilton encouraged it. Determined to transform America into an industrial power, Hamilton argued in 1791 that the United States needed "to procure all such machines as are known in any part of Europe". Britain imposed a £200 fine (about \$22,000 today) on anyone who tried to sneak inventions out of the country, according to research by Doron Ben-Atar, a Fordham University historian and the author of *Trade Secrets: Intellectual Piracy and the Origins of American Industrial Power*.

While Hamilton authorised the US Treasury to pay \$48 to subsidise the living expenses of an English weaver who pledged to deliver to the United States a copycat version of a UK spinning machine, China is not very inviting to foreigners who might wish to emigrate. "The best and brightest in the world still don't go to China", Ben-Atar said. "The jury is out on whether a society dedicated to repression can actually become the mecca of innovation."

China will not successfully compete with other nations if it continues to play by rules with which innovative companies and rule-of-law democracies cannot live. However, it could beat them at their own game by generating competitive inventions, brands and know-how and establishing an IP system that is reliable and fair. **iam**